

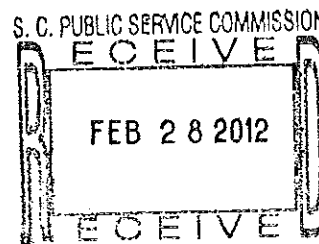
235297

David M. Stumbo



Respond to: ■ Greenwood Office:  
1629 Bypass 72 N.E.  
Greenwood, SC 29649  
(864)388-9100  
(864)388-9104 - Facsimile

February 27, 2012



Jocelyn G. Boyd, Esquire  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

RE: BHC Trucking v. Duke Energy Carolinas, LLC  
Docket No. 2011-482-E

COPY  
Posted: Tod  
Dept: S.A.  
Date: 2/28/12  
Time: 12:05

Dear Ms. Boyd:

Please find enclosed our Petition For Reconsideration in the above referenced matter.

Please return a filed copy in the envelope provided. *JS*

Respectfully Submitted,

McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.

David M. Stumbo, Esq.

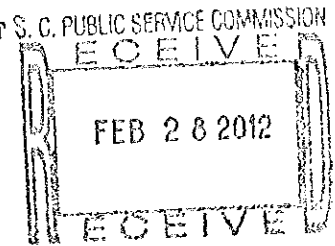
DMS/jcf  
Enclosures

cc: BHC Trucking  
Hearing Examiner Randall Dong  
Shannon Bowyer Hudson, -SC ORS  
Ronnie D. Shealy - Duke Energy

RECEIVED

RETURN DATE: *See card 2/17/12 ok*  
SERVICE: *ok* (TOD)  
FEB 28 2012  
PSC SC  
MAIL / DMS

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2011-482-E**



In re:	)	
	)	
BHC Trucking,	)	
Complainant,	)	<b>PETITION FOR RECONSIDERATION</b>
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC,	)	
Respondent.	)	

TO: THE PUBLIC SERVICE COMMISSION, BONNIE SHEALY, ATTORNEY FOR RESPONDENT AND SHANNON BOWYER HUDSON, ATTORNEY FOR THE OFFICE OF REGULATORY STAFF:

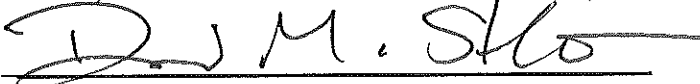
JOHN R. MCCRAVY, III, and DAVID M. STUMBO, of THE MCCRAVY, NEWLON & STURKIE LAW FIRM, P.A., counsel for the Complainant, hereby move for a reconsideration of the Commission's Order dated February 15, 2012, pursuant to S.C. Code Section 58-27-2150 and Public Service Commission Regulation 103-854. Commissioner Howard's Directive served as the Commission's Order on the issue, denying Complainant's request for leave to depose material witnesses and granting Respondent's Motion for Summary Judgment.

In its initial Complaint filed September 27, 2011, BHC Trucking stated clearly that the issue at hand was Respondent's misapplication of Commission Regulation 103-340, titled "Adjustment of Bills." Respondent applied Reg. 103-340 (6) in charging BHC Trucking six months back for "Human or Machine Error" instead of charging only sixty days back for a malfunctioning meter, as is allowed by Reg. 103-340(1). Respondent's meter on BHC's property is owned, installed, and maintained by Respondent. According to BHC Trucking, Respondent replaced the meter on BHC Trucking's property after discovering the undercharging on the bills.

On motions for summary judgment, the Commission must evaluate whether there is a genuine issue of material fact with the evidence at hand being viewed in light most favorable to the state. *Moore v. Barony House Restaurant*, 382 S.C. 647, 647 S.E.2d 500 (Ct. App. 2009). The issue of fact in question is how and why Respondent's meter malfunctioned, to determine which subsection of Reg. 103-340 should apply to the back charges. To this point, the Commission has only had the opportunity review written statements submitted by Respondent's own employees Barbara Yarborough, William Hunter, and Kenneth Davis in support of Respondent's position. Those witnesses have indicated that the meter readings were improperly transmitted by a remote device attached to the meter, and that that Respondent's meter did not malfunction. BHC Trucking submits that the malfunctioning transmitter and meter are one singular unit belonging to Respondent, and thus the back charges to BHC Trucking should fall under Reg. 103-340 (1), not under 103-340(6). The Complainant has had no opportunity to examine Respondent's employees on the record, pursuant to Regulation 103-834, as to their conclusions on how the malfunction of their equipment caused faulty meter readings and inaccurate billing statements to BHC Trucking. Viewed in the light most favorable to BHC Trucking, the evidence at hand does present a genuine issue of material fact on which provision of Commission Reg. 103-340 should apply. Accordingly, Respondent's motion for Summary Judgment should be denied and BHC Trucking should have the opportunity to depose of the aforementioned material witnesses pursuant to Commission Reg. 103-834.

Accordingly, BHC Trucking requests that the Commission reconsider its summary dismissal of the Complaint and grant leave for BHC Trucking to complete discovery and be heard by the Commission on the matter at the appropriate time.

McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.

BY:   
David M. Stumbo

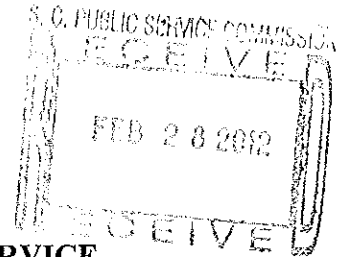
Attorneys for the Complainant  
1629 Bypass 72 NE  
Greenwood, SC 29649  
(864) 388-9100

Greenwood, S.C.  
February 27, 2012

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2011-482-E**

In re: )  
)  
BHC Trucking, )  
Complainant, )  
)  
v. )  
)  
Duke Energy Carolinas, LLC, )  
Respondent. )

**CERTIFICATE OF SERVICE**



The undersigned of McCRAVY NEWLON & STURKIE LAW FIRM, P.A., Attorney for the Claimant, hereby certifies that on February 27, 2012, she served a copy of the pleadings specified below by mailing the same in an envelope with sufficient postage attached via first class mail by depositing the same in the U.S. Mail, Greenwood, South Carolina, to the address referenced below.

**PLEADINGS:**

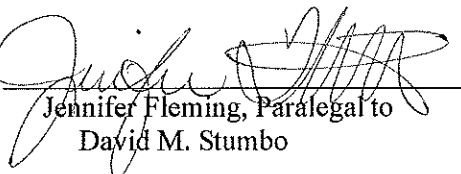
1. RESPONSE TO DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT
2. CERTIFICATE OF SERVICE  
BY MAIL

**SERVED:**

Shannon Bowyer Hudson  
SC Office of Regulatory Staff  
1401 Main St., Suite 900  
Columbia, SC 29201

Bonnie D. Shealy  
Robinson McFadden & Moore  
P.O. Box 944  
Columbia, SC 29202

McCRAVY NEWLON & STURKIE LAW FIRM, P.A.

BY:   
Jennifer Fleming, Paralegal to  
David M. Stumbo

Attorney for Claimant  
1629 Bypass 72 NE  
Greenwood, SC 29649  
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Greenwood, S.C.  
February 27, 2012